IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 549 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAYNABEN DINESHKUMAR CHHITODIYA

Versus

DINESHKUMAR KISHANLAL CHHITTODIYA

Appearance:

1. Special Criminal Application No. 549 of 2003

MR DHIRENDRA MEHTA for Petitioner No. 1

MR ARVIND K THAKUR for Respondent No. 1

Mr V M Pancholi, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/07/2003

ORAL JUDGEMENT

The present petition has been filed by the

petitioner above named under Article 227 of the Constitution of the India in order to challenge an order dated 27.1.2003 recorded by the learned Judge of the Family Court at Ahmedabad in Criminal Misc.Application No.2427/2002 under which the learned trial Judge granted mainenance @ Rs. 500/- per month. Feeling aggrieved by the said order of the trial court, the petitioner has preferred this petition before this Court. It has been mainly contended here that a settlement was produced before the trial court and as per the settlement, the contesting respondent was required to pay Rs.1500/as maintenance per month to the petitioner and @ Rs. 750/as maintenance per month to minor daughter Kinnari. That instead of passing an order in terms of the settlement between the parties, the trial court has passed an order for payment of maintenance @ Rs. 500/per month. That therefore, the order in question is not in accordance with the settlement arrived at between the parties and submitted before the trial court and, therefore, the order is ex-facie illegal and, therefore, according to the case of the petitioner, the said order may be quashed and set aside and the order of payment of maintenance Rs.1500/- and Rs.750/- per month to the mother and daughter may be substituted.

2. Rule was issued. In response to the service of notice of rule, Mr Arvind K Thakur, learned Advocate appears for respondent no.2 and Mr V M Pancholi, learned APP appears for the State. I have heard the learned Advocates for the parties and have perused the papers. The compromise application Exh.5 submitted before the trial court has been produced at page no.38 at Annexure 'B' which clearly indicates that the first respondent had agreed to pay maintenance to the wife and the child Rs.1500/- per month and @ Rs.750/- per month respectively. The order also shows that the above compromise was produced by the parties and it was read over and explained to the parties and thereafter they have voluntarily admitted the contents of the compromise application and, therefore, order was passed. It appears that instead of passing order in terms of the above settlement, an order was passed to the effect that the maintenance be paid @ Rs.500/- per month. On going through the compromise application and the said order, it is apparently clear that the order is not in conformity with the compromise arrived between the parties. Therefore, the order is contrary to the compromise arrived at between the parties and consequently it is required to be set aside and it is required to be substituted by order of payment of maintenance in terms of the compromise as aforesaid.

3. For the foregoing reasons, this petition is allowed. The order passed by the trial court dated 27.1.2003 is ordered to be set aside and it is directed that the first respondent shall pay maintenance to the petitioner and her minor daughter @ Rs.1500/- and Rs. 750/- per month respectively from the date of the application i.e. 21.10.2002.

Rule is made absolute accordingly.

[D P Buch, J.]
msp